IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3836 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINKARRAI V ACHARYA

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 3836 of 1998

MR DILIP B RANA for Petitioner No. 1-2

MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/02/2004

ORAL JUDGEMENT

In this petition, the petitioners prayer is that the respondents be directed to cover him under the pensionary benefit scheme and extend the benefit which is

now being made available to the other employees of the respondent - Corporation. It is the say of the petitioners that they worked as Physiotherapist in the hospital run by respondent no. 1 namely, Sheth Vadilal Sarabahi Hospital on part time basis. They rendered service for 34 years and thereafter, they retired. It is their say that at that time, they had exercised option in favour of receiving benefit under the pensionary scheme but the same was denied to him. They have, therefore, filed this petition for obtaining the aforesaid relief. The petitioners while advancing their claim have placed reliance on the Resolution passed by the respondents dated 19th April, 1984, in its General Meeting, which was to the effect that the payment of pension scheme was to be applied in view of the Circular No. 36 dated 25th October, 1983 to all its employees on the basis of the Government employees. The said scheme was made applicable from 1st January, 1983. The say of the petitioners is that when it refers to the employees it would also include the part timers.

1.1. The say of the respondent is that the petitioners were not eligible to receive this benefit because it was only meant for the full time employees and not part timers. According to the respondents for the part timers the scheme of CPF was very much in existence.

2. Mr. Dilip Rana learned advocate appearing for the petitioners has submitted that in view of the Resolution dated 19th April, 1984, the petitioners were entitled to receive the benefit of pensionary scheme and that they have duly exercised their option for the same. He has further submitted that when the Resolution itself shows that the scheme was to apply to all the employees, it would naturally be equally applicable to the petitioners also.

2.1. As against that, Mr. Munshaw learned advocate appearing for the respondents has submitted that the petitioners were merely part timers who could not have been given this benefit by virtue of the aforesaid Resolution. He has also placed reliance on the other Resolution by which it was decided to extend the benefit of the pensionary scheme to the employees of respondents. According to Mr. Munshaw when the reference is made about the employees, it is full time employees and not part timers.

3. Having carefully gone through the record of this petition and having carefully considered the submissions made on behalf of the parties, it clearly appears that

the petitioners had rendered service as part timer as Physiotherapist for considerably long time in the aforesaid hospital. However, it also appears that as a part timers they were required to render service for four hours a day and not beyond that. In that view of the matter, the question that is required to be considered is whether part timers like the present petitioners would be entitled to receive pensionary benefit. Though the aforesaid Resolution does not specifically prohibit extension of the said scheme to the part timers, no presumption can be drawn on the basis of the Resolution that even part timers were required to be covered under the Act. In fact, the Resolution only speaks of pension to the employees. Naturally when such important benefit of permanent nature is being conferred upon the employees, it would be available to the full time employee only and not to the persons working on part time or ad hoc basis. The petitioners claim is only based on the said Resolution. He has not pointed out whether even part timers are extended such benefit. Mr. Rana has placed reliance on the letter which was addressed to petitioner no. 2 by the respondents dated 1st October, 1997, asking him to furnish the details which are normally required for preparing the case of pension of the person about to retire. This information appears to have called for in routine way particularly in view of option exercised by him in favour of pension and none seems to have applied the mind whether part timers would be required to furnish these informations. No importance could be attached to such communication which is obviously by way of error. It is clear from the affidavit filed by the other side that even respondent no.2, and other institution run by respondent no. 1, no pensionary benefits are being extended to the part timers. It also appears that when there is no scheme or no Rules available for paying pension to the part timers, it is difficult for this Court to accede to the request made by the petitioner in this petition and grant the relief as prayed for.

In the circumstances, this petition has no merit and it is required to be dismissed and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]
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